APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,529	01/19/2000	David A. Wood	5181-38400	3267

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EXAMINER
HOANG, PHUONG N

ART UNIT	PAPER NUMBER
2126	13

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

		Application No.	Applicant(s)
Office Action Summary		09/487,529	WOOD ET AL.
		Examiner	Art Unit
		Phuong N. Hoang	2126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 May 2004*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15 - 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
     Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1 – 20 are pending for examination.

2.   In view of the appeal brief filed on 5/3/2004, the examiner hereby withdraws the

final rejection mailed 1/15/04 and reopens prosecution of the subject application on the

merit. The examiner regrets the delay in the citation of the newly found reference.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the
> United States before the invention thereof by the applicant for patent, or on an international application
> by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this
> title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act

of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior

to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4.   **Claims 1 – 6, 8 – 9, 12 – 13, and 15 – 20 are rejected under 35 U.S.C. 102(e)
as being anticipated by Chih-Lui I, US patent no. 6,088,335.**

5.   **As to claim 1**, Chih-Lui I teaches a computer system comprising the steps of:

a first device (mobile station, col. 7 lines 35 - 45); and

a second device (base station, col. 7 lines 35 - 60) coupled to the first device;

wherein the first device is configured to convey a first request (mobile station

signals a request to the base station, col. 7 lines 35 - 60) to the second device,

wherein the second device is configured to receive the first request, wherein the second

device is configured to detect a temporarily unavailable condition (if the scheduled list is

longer than the threshold L, the mobile is told to retry later (retry delay) in step 415. The

base station selects the value of this parameter based upon loading conditions at that

base station, col. 8 lines 20 - 30), wherein the second device is configured to convey a

response to the first device corresponding to the first request, and wherein the response

includes a delay value (retry delay, col. 8 lines 20 - 30) corresponding to the temporarily

unavailable condition.

6.   **As to claim 2**, Chih-Lui I teaches the step of the first device is configured to

receive the response (the mobile receives a delay parameter in a data burst assignment

message, , col. 8 lines 20 - 60), and wherein the first device is configured to convey a

second request (it initiates such a delay, before starting its transmission of the assigned

burst length, col. 8 lines 20 - 60) to the second device at a time corresponding to the delay value.

7.   **As to claim 3**, Chih-Lui I teaches the step of wherein the second device is configured to generate delay value according to a type of the temporarily unavailable condition (based upon loading conditions, col. 8 lines 20 - 30).

8.   **As to claim 4**, Chih-Lui I teaches the step of wherein the delay value corresponds to a first value (basic rate, col. 9 lines 45 – col. 10 lines 24) in response to the temporarily unavailable condition corresponding to a first type of condition and wherein the delay value corresponds to a second value (high rate, col. 9 lines 45 – col. 10 lines 24) in response to the temporarily unavailable condition corresponding to a second type of condition.

9.   **As to claim 5**, Chih-Lui I teaches the step of wherein the second device is configured to calculate delay value using one or more variables (m, a1, col. 10 and col. 13) that correspond to one or more previous temporarily unavailable conditions.

10.   **As to claim 6**, Chih-Lui I does not explicitly teach the step of wherein the delay value corresponds to an encoded value (col. 10 and 13).

11.   **As to claim 8**, it is the system claim of claim 1. See claim 1 above. Further,

Chih-Lui I teaches a communications medium (access controller, col. 3 lines 60 – 65).

12.   **As to claim 9**, Chih-Lui I teaches the step of wherein the communications

medium comprises a switching network (central switch, col. 4 lines 1 – 4).

13.   **As to claim 12**, see rejection for claim 3 above.

14.   **As to claim 13**, see rejection for claim 6 above.

15.   **As to claim 15**, it is a method claim of claim 1. See rejection for claim 1 above.

16.   **As to claim 16**, see rejection for claim 2 above.

17.   **As to claim 17**, Chih-Lui I teaches the method of claim 15, further comprising the

step of initiating an error recovery mechanism corresponding to the response in

response to determining that a retry limit corresponding to the first request has been

exceeded (when a mobile receives a delay, it initiates such a delay before starting its

transmission, col. 8 lines 20 - 30).

18.   **As to claim 18**, see rejection for claim 6 above.

19.   **As to claim 19,** Chih-Lui I teaches the steps of:

determining a type of the temporarily unavailable condition (loading conditions,

col. 8 lines 20 – 30); and

generating the delay value (retry delay, col. 8 lines 20 - 30) according to the type

of the temporarily unavailable condition.

20.   **As to claim 20,** see rejection for claim 5 above.

Claim Rejections - 35 USC § 103

21.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

22.   **Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable**

over Chih-Lui I, US patent no. 6,088,335 in view of Bushmitch, US patent no.

6,275,471.

23.   **As to claim 7,** Chih-Lui I teaches the step of the first device configured to cause

an error recovery mechanism to be initiated in response to detecting that a retry limit

corresponding to the first request is exceeded (when a mobile receives a delay, it initiates such a delay before starting its transmission, col. 8 lines 20 - 30).

Chih-Lui I does not explicitly teach that a policy layer coupled to the first device to perform an action.

Bushmitch teaches the step of a policy layer coupled to the first device and second device (A media delivery system .... NACK mechanism, col. 5 lines 50 – col. 6 lines 14 and col. 7 lines 7 – 25), wherein the policy layer is configured to cause an error recovery mechanism to be initiated (retransmitting, col. 7 lines 7 – 25) in response to detecting that a retry limit corresponding to the first request is exceeded, and wherein the error recovery mechanism is configured to perform an action according to the response.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Chih-Lui I and Bushmitch's system because Bushmitch's policy layer would provide a decision how to recover the error when receiving the negative acknowledge message from the receiver.

24.   **As to claim 14**, see rejection for claim 7 above.

25.   **Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chih-Lui I, US patent no. 6,088,335 in view of Bushmitch, US patent no. 6,275,471, and further in view of Chambers, US patent no. 5,884,052.**

26.   **As to claim 10**, Chih-Lui I and Bushmitch do not teach the step of wherein the communications medium comprises a shared bus.

Chamber teaches the step of wherein the communications medium comprises a shared bus (PCI bus, col. 6 - 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Chih-Lui I, Bushmitch, and Chamber's system because Chamber's shared bus would be necessary to provide the communication on the network.

27.   **As to claim 11**, Chamber teaches the computer system of claim 8, wherein the communications medium comprises an arbitrated loop (the PCI agent attempts a subsequent access.....arbitrates for and acquires ownership of the PCI bus, col. 8 lines 40 - 50).
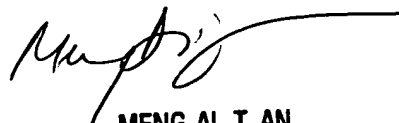
Conclusion

28.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong N. Hoang whose telephone number is (703) 605-4239. The examiner can normally be reached on Monday - Friday 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Meng-Ai An can be reached on (703)305-9678. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Ph
August 6, 2004

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